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**BEFORE THE WEST VIRGINIA STATE BOARD OF  
REGISTRATION FOR PROFESSIONAL ENGINEERS**

**IN RE: BRUCE E. KENNEY III**

**C2017-16**

**CONSENT ORDER**

Comes now the West Virginia State Board of Registration for Professional Engineers by Edward L. Robinson, P.E., its President, (hereinafter “the Board”) for the purpose of agreeing to resolve the Board-initiated Complaint against Respondent Bruce E. Kenney III (“Respondent Kenney”). As reflected in this document, the parties have reached an agreement concerning the proper disposition of this matter, and the Board, upon approval of such agreement, does hereby **FIND** the following:

1. The matters set forth herein are within the jurisdiction of the Board, which is the state entity with the power and duty to regulate the practice of engineering in the State of West Virginia.
2. Respondent Kenney has held West Virginia P.E. License No. 13442 since July 31, 1997, which license lapsed on December 31, 2016.
3. In late 2016 it came to the attention of the Board that Respondent was involved in a federal investigation of what was termed a “pay-to-play” scheme involving public monies and contracts with the West Virginia Department of Highways (WV DOH).
4. Respondent Kenney, on December 12, 2016, waived his right to a Grand Jury proceeding and agreed to plead guilty to two felony counts: Honest Services Wire Fraud Conspiracy in violation of Title 18, United States Code, Sections 1343, 1346 and 1349, and Conspiracy to Impede the Internal Revenue Service in violation of Title 18, United States Code, Section 371.

5. The Information was filed against Respondent Kenney in the United State District Court for the Northern District in Wheeling on December 13, 2016, and styled *USA v. Bruce E. Kenney*, 5:16-cr-41.
6. The conviction relates to the manner and means of a conspiracy involving Respondent and others beginning in or about July 2009 through April 2014.
7. A judgment order was entered on August 8, 2017, regarding the guilty plea to the two counts, sentencing him to a 21-month term of imprisonment, requiring a restitution payment of \$34,714.00 to the Internal Revenue Service, and imposing a forfeiture personal money judgment of \$162,536.00.
8. For purposes of this Consent Order, the following names refer to the following persons or firms: “Mr. Miller” is James T. Miller, a professional engineer and former employee of the WV DOH and Dennis Corporation, who is the Respondent in Board Complaint C2017-17; “Mr. Dennis” and “Dennis Corporation” are the respondents named in Board Complaint C2017-18; and “Mr. Nichols” is Andrew P. Nichols, a professional engineer who was also a former professor at Marshall University and an employee of Dennis Corporation at the time of some or all of the events which gave rise to this Complaint, and is the Respondent in Board Complaint C2018-02.
9. The conviction relates to the manner and means of a conspiracy involving the receipt of monies from Dennis Corporation while an employee of the WV DOH, some of which were characterized as bribes or kickbacks in exchange for future, official action taken or to be taken by Mr. Kenney in favor of Dennis Corporation beginning in or about February 2010 through sometime in December 2011.

10. Respondent's role in the pay-to-play scheme, which garnered him almost \$200,000.00 in payments from Dennis Corporation while he was also a WVDOH employee can be summarized in relevant part as follows:
  - a. From in or about 1990 to in or about February 2014, Respondent was an employee of the WV DOH, working in the Traffic Engineering Division for his "clients" or "customers" who were the citizens of the State of West Virginia;
  - b. For several months starting in or about May 2008, Respondent was hired by Dennis Corporation as the manager of its North Carolina Division with no actual job duties and paid a total of \$45,000.00;
  - c. Although the "employment" with Dennis was terminated in 2009, arrangements were made for payments to accumulate, during which time Respondent, in his capacity as a DOH employee, ensured that any proposal which would be awarded certain DOH projects named Dennis Corporation as the sub-contractor;
  - d. After successfully arranging for Dennis Corporation to be the sub-contractor on the DOH projects, Respondent received a check for \$10,000.00 for the accumulated back payments;
  - e. On July 1, 2009, and continuing through December 2011, Respondent received checks totaling over \$90,000.00, first through Mr. Nichols and then through Mr. Miller, for Respondent's role in the pay-to-play scheme; and
  - f. Respondent continued to receive payments from Dennis Corporation totaling \$50,000.00 through checks made payable to West Virginia Control Solutions, a sole proprietorship owned by a related entity.
11. The Board initiated Complaint Number C2017-16 at its regular meeting on February 6, 2017, to which no response was filed.

12. The Board has taken into account the following factors in reaching this settlement: the circumstances leading to the violation, which were criminal acts; the nature and severity of the violation and the risk of harm to the public, which the Board finds to be egregious; the extent to which Respondent has cooperated with the Board and the Board's investigation; and other matters as may be appropriate. W. Va. Code R. § 7-1-15.4.
13. The Board has incurred administration costs in excess of One Thousand Dollars (\$1,000.00) in the investigation, initiation and resolution of this complaint.

#### **CONCLUSIONS OF LAW**

14. The Board is the state entity with the power and duty to regulate the practice of engineering in the State of West Virginia, and matters related to such practice are within the jurisdiction of the Board. W. Va. Code § 30-13-1 *et seq.*
15. The failure to file a response to a complaint shall be deemed an admission of the factual allegations contained in the complaint. W. Va. Code R. § 7-2-5.
16. The Board may suspend or revoke or refuse to issue, restore or renew a certificate of registration, or place on probation, impose a civil penalty or reprimand any professional engineer who has been negligent, incompetent or committed an act of misconduct in the practice of engineering. W. Va. Code § 30-13-21(a)(2).
17. Respondent's actions resulting in federal felony convictions for Honest Services Wire Fraud Conspiracy and Conspiracy to Impede the Internal Revenue Service constitute acts of misconduct in the practice of engineering, in violation of W. Va. Code § 30-13-21(a)(2).
18. The Board may suspend or revoke or refuse to issue, restore or renew a certificate of registration, or place on probation, impose a civil penalty or reprimand any professional engineer who has been convicted of any crime which is a felony, or any crime whether a

felony or misdemeanor if an essential element is dishonesty or is directly related to the practice of engineering. W. Va. Code § 30-13-21(a)(3).

19. Respondent Kenney pled guilty to felonies which had an essential element of dishonesty and which were also directly related to the practice of engineering, in violation of W. Va. Code § 30-13-21(a)(3).
20. The Board may suspend or revoke or refuse to issue, restore or renew a certificate of registration, or place on probation, impose a civil penalty or reprimand any professional engineer who has failed to comply with any of the provisions of this article or any of the rules promulgated under it. W. Va. Code § 30-13-21(a)(4).
21. These rules include the Rules of Professional Responsibility, which include a general obligation in W. Va. Code R. § 7-1-12 to promote the public welfare and maintain a high standard of integrity and practice, including the responsibility to:
  - a. adhere to standards of highest ethical and moral conduct in all aspects of the practice of engineering (subsection a);
  - b. represent themselves before the public only in an objective and truthful manner (subsection c); and
  - c. avoid conflicts of interest and faithfully serve the legitimate interests of their employers, clients, and customers within the limits defined by the Rules of Professional Responsibility (subsection d).
22. The actions of Respondent which resulted in his plea of guilty to the federal felony offenses of Honest Services Wire Fraud Conspiracy and Conspiracy to Impede the Internal Revenue Service violated the general provision set forth in W. Va. Code R. § 7-1-12 and each of the above-cited subsections.
23. The Rules of Professional Responsibility set forth some specific rules regarding a registrant's obligation to society which prohibit a registrant from permitting the use of their name or firm name, or associating in business ventures with any person or firm

engaging in fraudulent or dishonest business or professional practices. W. Va. Code R. § 7-1-12.3(g).

24. Not only did Respondent Kenney associate with a person and firm engaged in fraudulent or dishonest business or professional practices, but knowingly and as an employee of the State of West Virginia became involved in the fraudulent or dishonest business or professional practices, played a significant role in the “pay-to-play scheme” and personally profited from his acts in furtherance of the scheme, in violation of W. Va. Code R. § 7-1-12.3(g).
25. The Rules of Professional Responsibility set forth some specific rules regarding a registrant’s obligation to employers and clients, including the following:
  - a. Registrants shall not solicit or accept financial or other valuable consideration, directly or indirectly, from other parties in connection with work for employers or clients (W. Va. Code R. § 7-1-12.4(d);
  - b. Registrants shall make full prior disclosures to their employers of potential conflicts of interest or other circumstances which could influence or appear to influence their judgment or the quality of their service (W. Va. Code R. § 7-1-12.4(e); and
  - c. Registrants shall not accept compensation, financial or otherwise, from more than one party for services pertaining to the same project unless the circumstances are fully disclosed and agreed to by all interested parties (W. Va. Code R. § 7-1-12.4(f).
26. The actions of Respondent which resulted in his plea of guilty to the federal felony offenses of Honest Services Wire Fraud Conspiracy and Conspiracy to Impede the Internal Revenue Service violated the above-cited provisions of W. Va. Code R. § 7-1-12.4 in the following particulars:

- a. Respondent accepted financial or other valuable consideration from another party connected to work which was for his employer, State of West Virginia, and for his client, the citizens of West Virginia (W. Va. Code R. § 7-1-12.4(d));
  - b. Respondent did not make full prior disclosures to his employer, the State of West Virginia, of the potential (and actual) conflicts of interest which could influence or appear to influence his judgment or the quality of his service to the State of West Virginia (W. Va. Code R. § 7-1-12.4(e)); and
  - c. Respondent accepted compensation from both the State and Dennis Corporation for services pertaining to West Virginia projects for which Dennis Corporation received payment from State funds without disclosing all the circumstances to the State (W. Va. Code R. § 7-1-12.4(f)).
27. The Board may suspend or revoke or refuse to issue, restore or renew a certificate of registration, or place on probation, impose a civil penalty or reprimand any professional engineer who knowingly made false statements or signed false statements to induce payment. W. Va. Code § 30-13-21(a)(7).
  28. Respondent Kenney made and signed false statements inducing payment from Dennis Corporation, in violation of W. Va. Code § 30-13-21(a)(7).
  29. The Board may suspend or revoke or refuse to issue, restore or renew a certificate of registration, or place on probation, impose a civil penalty or reprimand any professional engineer who engaged in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public. W. Va. Code § 30-13-21(a)(11).
  30. Respondent Kenney's involvement in the pay-to-play scheme which resulted in federal felony convictions constitutes dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public, in violation of W. Va. Code § 30-13-21(a)(11).
  31. The Board is authorized to "assess civil penalties against any person who violates any provision of this article or any rule promulgated by the board for each offense in an

amount determined by the board.” W. Va. Code § 30-13-21(b); *see also* W. Va. Code R. § 7-1-15.

32. In determining the amount of a civil penalty to be assessed, the Board may consider such factors as the circumstances leading to the violation; the nature and severity of the violation and the risk of harm to the public; the extent to which the cited person or firm has cooperated with the Board and the Board’s investigation; and other matters as may be appropriate. W. Va. Code R. § 7-1-15.4.
33. The assessment of administrative costs is within the Board’s sole discretion. W. Va. Code § 30-13-21(d)(4) and W. Va. Code R. § 7-1-14.4.

#### **CONSENT OF RESPONDENT**

Bruce E. Kenney III agrees to the following:

34. Respondent is represented by counsel and is aware of his right to pursue this matter through appropriate administrative and/or court procedures, including his right to a formal hearing before the Board, and notwithstanding, Respondent intelligently and voluntarily waives these rights provided the Board accepts the terms and conditions set forth in this Consent Order.
35. Respondent accepts the findings and admits the violations set forth above and consents to the entry of this Consent Order freely and voluntarily and not under duress, restraint or compulsion.
36. Respondent has previously waived any and all objections regarding the timeliness of Board action on Complaint C2017-16, which waiver is binding on Respondent even in the event that the Board does not approve this Consent Order.



37. Should the Board not approve this Consent Order, Respondent has waived any objections to the Board or any of its members participating in the adjudication of this matter based on the Board's consideration of this Consent Order. This paragraph is binding on Respondent even if the Board does not approve this Consent Order.
38. Respondent acknowledges that the Board may reject this proposal, notice and hold a hearing, and, upon adjudication, impose such sanctions of a disciplinary nature as it deems appropriate based on the complaint as filed.
39. Respondent understands there are related complaints naming other professional engineers licensed in West Virginia at the time they were involved in the pay-to-play scheme and agrees to cooperate in the investigation and prosecution of these other professional engineers, including providing sworn testimony at any hearing which may be held in connection with these related pending complaints.
40. Respondent understands that this Consent Order constitutes a full and final settlement of this matter, and nothing in this Consent Order or the circumstances giving rise to the same may be the subject of any appeal or other civil or administrative actions except an action by the Board to enforce the terms of this Consent Order, but that nothing in this Consent Order prohibits the Board from considering this disciplinary action or the circumstances giving rise to same with regard to any future, unrelated disciplinary matter involving Respondent which may be before this Board.
41. Respondent understands that the Complaint, documents submitted to the Board by Respondent, and this Consent Order, together with other public documents which may be in the file, are public records which must be made available upon legal request in accordance with the state's Freedom of Information Act.

42. Respondent agrees that the sum and substance of the Complaint and this agreement in part or in their entirety will be set forth in Board publications and on the Board website, as well as other appropriate placements, including the non-public enforcement exchange database administered by the National Council of Examiners for Engineering and Surveying (NCEES).
43. Respondent acknowledges that non-compliance with this Consent Order may result in the rescission of this agreement, the reinstatement of the Complaint, and the addition of any other charges which may arise or ensue from non-compliance with this Consent Order.
44. Respondent acknowledges that proof of any material misstatement or misrepresentation made in connection with this matter may result in the rescission of this agreement, the reinstatement of the Complaint, and the addition of any other charges which may arise or ensue from providing false information to the Board in violation of West Virginia engineering law.

### ORDER

1. On the basis of the foregoing, and upon entry of this Consent Order, the Board hereby **ORDERS** that this Consent Order shall serve as settlement of Complaint Number C2017-16 pursuant to W. Va. Code § 30-13-22(b).
2. Respondent is **REPRIMANDED** for the several violations of W. Va. Code R. § 7-1-12, all of which violate W. Va. Code § 30-13-21(a)(4), his violation of W. Va. Code § 30-13-21(a)(3) and his violation of W. Va. Code § 30-13-21(a)(7).
3. The Board **ORDERS** Respondent Kenney to pay the maximum civil penalty of Fifteen Thousand Dollars (\$15,000.00) for violation of W. Va. Code § 30-13-21(a)(11).

4. Respondent Kenney, who is not currently licensed in West Virginia, agrees to arrange for the return of his professional engineering seal within thirty (30) days of entry of this Consent Order and further agrees to never apply to reinstate his professional engineering license in this State and to never practice or offer to practice engineering in West Virginia at any future time.
5. The civil penalties imposed herein totaling Fifteen Thousand Dollars (\$15,000.00) must be paid no later than two years from the date of his release from prison, the Board to be notified by Respondent of such date of release within thirty (30) days of same. The civil penalty amount shall be made payable to the W. Va. P.E. Board for transfer to the general fund of the State of West Virginia upon receipt.
6. The Board **ORDERS** Respondent to pay administrative costs in the amount of Five Hundred Dollars (\$500.00), which is to be paid within ninety (90) days of the date of entry set forth below, made payable to the W. Va. P.E. Board for deposit into the account of the Board.
7. The sum and substance of the Complaint and this agreement in part or in their entirety shall be set forth in Board publications and on the Board website, as well as other appropriate placements, including the non-public enforcement exchange database administered by the National Council of Examiners for Engineering and Surveying (NCEES).
8. Any violation of the terms of this Consent Order shall be immediate cause for further disciplinary action by the Board.
9. If the civil penalties and administrative costs totaling Fifteen Thousand Five Hundred Dollars (\$15,500.00) are not timely paid, this Consent Order may be summarily enforced in the Circuit Court of Kanawha County without further notice to Respondent upon

application by the Board for the entry of a Judgment Order for the total amount of payment agreed to herein, together with pre-judgment interest from the date of the President's signature hereon, post-judgment interest from the date of entry of the Judgment Order and all costs of any enforcement action(s), which judgment shall be fully executable in accordance with applicable law.

10. This matter shall be closed upon execution of this Consent Order by both parties and the full payment of the civil penalties agreed to herein.
11. This Consent Order constitutes a full and final settlement of this matter, and nothing in this Consent Order or the circumstances giving rise to same may be the subject of any appeal or other civil or administrative actions except an action by the Board to enforce the terms of this Consent Order. This shall not prohibit the Board from considering this disciplinary action or the circumstances giving rise to the same with regard to any future, unrelated disciplinary matter involving Respondent which may come before this Board.
12. This Consent Order relates solely to matters set forth in West Virginia engineering law and does not evidence compliance with any other laws of the State of West Virginia or its political subdivisions, nor should any such compliance be implied.

**[signatures appear on next page]**


AGREED TO BY:

  
\_\_\_\_\_  
BRUCE E. KENNEY III  
*Respondent*

ENTERED into the records of the West Virginia State Board of Registration for Professional Engineers this 14<sup>th</sup> day of December, 2017.

WEST VIRGINIA STATE BOARD OF REGISTRATION  
FOR PROFESSIONAL ENGINEERS

By:

  
\_\_\_\_\_  
EDWARD L. ROBINSON, P.E.  
BOARD PRESIDENT

APPROVED BY:

By:

  
\_\_\_\_\_  
SHARON L. POTTER (WV Bar No. 2952)  
Spilman, Thomas & Battle, PLLC  
*Counsel for Respondent*